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S.C.O. Contractors, Inc. and Construction One, Inc. and Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 7-CA-39402 and 7-CA-39403

September 19, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon charges filed by the Union on January 23, 1997, the General Counsel of the National Labor Relations Board issued a consolidated complaint (complaint) on April 25, 1997, against S.C.O. Contractors, Inc. (Respondent SCO) and Construction One, Inc. (Respondent One), the Respondents, alleging that they have violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, Respondent SCO failed to file an answer.

On August 11, 1997, the General Counsel filed a Motion for Partial Default Summary Judgment with the Board with respect to the allegations involving Respondent SCO. On August 14, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither Respondent filed a response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Partial Default Summary Judgment disclose that the Region, by letter dated May 27, 1997, notified Respondent SCO that unless an answer were received by June 11, 1997, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Partial Summary Judgment.¹

¹ As indicated above, the General Counsel's motion does not seek summary judgment with respect to Respondent One, which did file an answer denying various allegations of the complaint, including the joint-employer allegations. Accordingly, the joint employer and

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent SCO, a corporation with its principal office and place of business in Grove City, Pennsylvania, has been a carpentry contractor in the construction industry and has provided such services as a subcontractor at an Amerihost Hotel jobsite on Range Road in Port Huron, Michigan (the Port Huron site). During the 1996 calendar year, Respondent SCO, in conducting its operations described above, had gross revenues in excess of \$50,000 for carpentry services performed in the Commonwealth of Pennsylvania, and also had gross revenues in excess of \$50,000 for carpentry services performed for customers outside the Commonwealth of Pennsylvania. We find that Respondent SCO is now, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 17, 26, and 30, 1996, and January 12, 21, and 24, 1997, Respondent SCO coercively interrogated employees regarding their activities on behalf of and in support of the Union.

About December 17, 1996, and January 12 and 21, 1997, Respondent SCO conveyed to employees the futility of selecting the Union as their exclusive collective-bargaining representative.

About December 17, 1996, Respondent SCO asked employees if they were ready to sign an affidavit swearing that they were not and had never belonged to a union, told employees they had to make sure that a union did not get in, and asked employees if they could promise that they could keep a union out.

About December 26, 1996, Respondent SCO told employees that it would not be able to hire them because of their support of the Union, that it was not allowed to hire union people, and that it could only hire employees on the condition that they would agree that it was a nonunion job.

About January 21, 1997, Respondent SCO threatened employees with loss of employment by stating that it would shut the job down and bring in another crew from Pennsylvania to finish the job if they selected the Union as their representative, supported the position that employees were to remain nonunion if they wished to remain on the job, interfered with employee rights by trying to persuade them to delay their selection of a union, told employees that a 'union

other allegations involving Respondent One are remanded to the Regional Director for further appropriate action, as requested.

brother'' had been on the jobsite and that they had lied when hired by stating that they were not union members, and threatened employees regarding their support for the Union by stating that they would be terminated if they lied when asked about being in the Union.

About January 22, 1997, Respondent SCO told employees they would be terminated if they wore a union hardhat, interfered with Section 7 rights of employees and coercively interrogated them by asking them to sign a union waiver agreement, and threatened employees that they would be discharged if they did not sign the union waiver agreement.

About January 24, 1997, Respondent SCO attempted to disparage the Union by telling employees that the Union would try to flatten tires and vandalize the job.

About January 29 and February 13, 1997, Respondent SCO promised employees further job opportunities if they did not vote for the Union.

About February 10, 1997, Respondent SCO threatened employees with loss of jobs if they voted for the Union.

About January 21, 1997, Respondent SCO discharged its employee Ralph Giese, and on January 22, 1997, discharged its employees Teresa Zinzo and Kirk Klebba. Since about March 1997, Respondent SCO has declined to offer additional job opportunities to its employees who had worked on the Port Huron site. Respondent SCO took these actions because of the activities of its employees on behalf of and in support of the Union and to discourage employees from engaging in these and other concerted activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, Respondent SCO has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By discharging Ralph Giese, Teresa Zinzo, and Kirk Klebba, and declining to offer additional job opportunities to its employees who had worked at the Port Huron site, Respondent SCO has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent SCO has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically,

having found that Respondent SCO has violated Section 8(a)(3) and (1) by discharging Giese, Zinzo, and Klebba, we shall order Respondent SCO to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent SCO shall also be required to expunge from its files any and all references to the unlawful discharges and to notify the discriminatees in writing that this has been done.

In addition, having found that Respondent SCO has violated Section 8(a)(3) and (1) by declining, since early March 1997, to offer additional job opportunities to its employees who had worked on the Port Huron site, we shall order Respondent SCO to place all those employees on available jobs and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, S.C.O. Contractors, Inc., Grove City, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees regarding their activities on behalf of and in support of the Union.

(b) Conveying to employees the futility of selecting the Union as their exclusive collective-bargaining representative.

(c) Asking employees if they are ready to sign an affidavit swearing that they are not and have never belonged to a union.

(d) Telling employees they have to make sure that a union does not get in or asking employees if they can promise that they can keep a union out.

(e) Telling employees that it will not be able to hire them because of their support of the Union, that it is not allowed to hire union people, or that it can only hire employees on the condition that they will agree that it is a nonunion job.

(f) Threatening employees with loss of employment by stating that it will shut a job down and bring in another crew to finish the job if they select the Union as their representative.

(g) Supporting the position that employees are to remain nonunion if they wish to remain on the job.

(h) Interfering with employee rights by trying to persuade them to delay selection of a union.

(i) Telling employees that they had lied when hired by stating that they were not union members or threatening employees regarding their support for the Union by stating that they will be terminated if they lie when asked about being in the Union.

(j) Telling employees they will be terminated if they wear a union hardhat.

(k) Asking employees to sign a union waiver agreement or threatening employees that they will be discharged if they do not sign a union waiver agreement.

(l) Attempting to disparage the Union by telling employees that the Union would try to flatten tires and vandalize the job.

(m) Promising employees further job opportunities if they do not vote for the Union.

(n) Threatening employees with loss of jobs if they vote for the Union.

(o) Discharging employees or declining to offer them additional job opportunities because of their activities on behalf of and in support of the Union or to discourage employees from engaging in these and other concerted activities.

(p) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, offer Ralph Giese, Teresa Zinzo, and Kirk Klebba full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this order, remove from its files any and all references to the unlawful discharges, and within 3 days thereafter notify Ralph Giese, Teresa Zinzo, and Kirk Klebba in writing that this has been done.

(c) Make Ralph Giese, Teresa Zinzo, and Kirk Klebba whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(d) Place employees who had worked on the Port Huron site on available jobs and make them whole for any loss of earnings resulting from its failure to do so since early March 1997, with interest, in the manner set forth in the remedy section of this decision.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Grove City, Pennsylvania, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent SCO's authorized representative, shall be posted by Respondent SCO and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent SCO to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent SCO has gone out of business or closed the facility involved in these proceedings, Respondent SCO shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent SCO at any time since January 23, 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent SCO has taken to comply.

IT IS FURTHER ORDERED that the proceeding is remanded to the Regional Director for further appropriate action.

Dated, Washington, D.C. September 19, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively interrogate employees regarding their activities on behalf of or in support of Michigan Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

WE WILL NOT convey to employees the futility of selecting the Union as their exclusive collective-bargaining representative.

WE WILL NOT ask employees if they will sign an affidavit swearing that they are not and have never belonged to a union.

WE WILL NOT tell employees they have to make sure that a union does not get in or ask employees if they can promise that they can keep a union out.

WE WILL NOT tell employees that we will not be able to hire them because of their support of the Union, that we are not allowed to hire union people, or that we can only hire employees on the condition that they will agree that the job is a nonunion job.

WE WILL NOT threaten employees with loss of employment by stating that we will shut a job down and bring in another crew to finish the job if they select the Union as their representative.

WE WILL NOT support the position that employees are to remain nonunion if they wish to remain on the job.

WE WILL NOT interfere with employee rights by trying to persuade them to delay selection of a union.

WE WILL NOT tell employees that they had lied when hired because they stated that they were not union members or threaten employees regarding their support for the Union by stating that they will be terminated if they lie when asked about being in the Union.

WE WILL NOT tell employees they will be terminated if they wear a union hardhat.

WE WILL NOT ask employees to sign a union waiver agreement or threaten employees that they will be discharged if they do not sign a union waiver agreement.

WE WILL NOT attempt to disparage the Union by telling employees that the Union would try to flatten tires and vandalize the job.

WE WILL NOT promise employees further job opportunities if they do not vote for the Union.

WE WILL NOT threaten employees with loss of jobs if they vote for the Union.

WE WILL NOT discharge employees or decline to offer them additional job opportunities because of their activities on behalf of and in support of the Union or to discourage employees from engaging in these and other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Ralph Giese, Teresa Zinzo, and Kirk Klebba full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful discharges, and within 3 days thereafter notify the discriminatees in writing that this has been done.

WE WILL make Ralph Giese, Teresa Zinzo, and Kirk Klebba whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL place employees who had worked on the Port Huron site on available jobs and make them whole for any loss of earnings resulting from our failure to do so since early March 1997, with interest, in the manner set forth in a decision of the National Labor Relations Board.

S.C.O. CONTRACTORS, INC.